

II

(Non-legislative acts)

DECISIONS

COMMISSION DECISION (EU) 2016/195

of 14 August 2015

on State aid measures SA.33083 (12/C) (ex 12/NN) implemented by Italy providing for reduced taxes and contributions linked to natural disasters (all sectors except agriculture) and SA.35083 (12/C) (ex 12/NN), implemented by Italy providing for reduced taxes and contributions linked to the earthquake in Abruzzo in 2009 (all sectors except agriculture)

(notified under document C(2015) 5549)

(Only the Italian text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union ("TFEU"), and in particular the second subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽¹⁾ and having regard to their comments,

Whereas:

1. PROCEDURE

State aid measure SA.33083 (12/NN) — Reduced taxes and contributions linked to natural disasters in Sicily, northern Italy and other regions

- (1) On 21 February 2011, the Commission received a request for information from a judge of the labour division of the ordinary court of Cuneo in Piedmont ⁽²⁾, made in accordance with the Commission notice on the enforcement of State aid law by national courts ⁽³⁾. In the request, the judge drew the Commission's attention to the existence of a series of laws, dating from 2002, 2003 and 2007, which appeared to introduce State aid measures in the form of a 90 % reduction in taxes and compulsory social security contributions and premiums for insurance against accidents at work, linked to the earthquake that hit eastern Sicily (the provinces of Siracusa, Catania and Ragusa) on 13-16 December 1990 and the floods in northern Italy in November 1994; the judge asked (though the questions were ordered slightly differently) whether these measures: (i) had been notified by Italy pursuant to Article 108(3) of the TFEU, (ii) had been assessed by the Commission, (iii) had been the subject of a formal investigation, (iv) had been the subject of a decision, or (v) if no decision had been adopted, when a

⁽¹⁾ Commission Decision C(2012) 7128 final (OJ C 381, 11.12.2012, p. 32).

⁽²⁾ Order (*ordinanza*) of the ordinary court (*tribunale*) of Cuneo, 18 February 2011, making a request for information in accordance with the Commission notice on the enforcement of State aid law by national courts.

⁽³⁾ OJ C 85, 9.4.2009, p. 1.

decision would be adopted. On 21 March 2011, the Commission departments replied that these measures did not appear to have been notified by the Italian authorities and that the Commission had not yet opened any proceeding or formal investigation.

- (2) On 27 May 2011 the case was registered at the Commission under the reference number SA.33083 (11/CP).
- (3) On 25 July 2011 the Commission sent a request for information to the Italian authorities. After a reminder on 8 September 2011, the Italian authorities replied on 6 October 2011. By letter of 14 October 2011, the Commission requested additional information, to which the Italian authorities replied by letter dated 7 December 2011.
- (4) By letter of 19 June 2012, the Commission requested additional information regarding the measures linked to the natural disasters in eastern Sicily and northern Italy, and other similar measures linked to natural disasters that had occurred in Italy since 1990 ⁽⁴⁾; the Commission asked the Italian authorities to submit comments relating in particular to whether these measures were lawful, whether they constituted State aid, and whether they might be justified under the State aid rules. The Commission departments also informed the Italian authorities that the Commission was considering issuing an injunction requiring the suspension of any unlawful aid granted under the aforementioned measures. Italy replied by letter dated 25 July 2012.
- (5) Meanwhile, on 6 July 2012, the Commission received a request for information regarding this proceeding from the ordinary court of Vercelli in Piedmont ⁽⁵⁾. The Commission departments replied on 20 July 2012.
- (6) As the aid scheme had not been notified pursuant to Article 108(3) of the TFEU, and had been put into effect before the Commission had taken a decision authorising it, the measures were entered in the Commission's State aid register as non-notified aid, under the number SA.33083 (12/NN).
- (7) On the basis of information gathered during the preliminary assessment phase, the Commission decided to divide the case, separating the agricultural sector. The present Decision, therefore, does not concern activities connected with the production, processing and marketing of agricultural products as listed in Annex I to the Treaty, with the exception of fisheries and aquaculture products.

State aid measure SA.35083 (12/NN) — Reduced taxes and contributions linked to the earthquake in Abruzzo in 2009

- (8) By electronic notification of 2 July 2012, registered by the Commission the same day under the reference number SA.35083 (12/NN), the Italian authorities notified a measure providing for aid in the form of reduced taxes and contributions linked to the earthquake in Abruzzo in 2009; the Commission had already requested information on this measure in its letter of 19 June 2012 under number SA.33083 (12/NN).
- (9) In the notification, the Italian authorities argued that the compatibility of the measure should be assessed in the light of Article 107(2)(b) of the TFEU ('aid to make good the damage caused by natural disasters') or Article 107(3)(c) of the TFEU ('aid to facilitate the development of certain ... economic areas'), because its purpose was to compensate for the macroeconomic impact of the natural disaster in terms of a decrease in GDP. The Italian authorities referred in particular to a significant decline in the GDP of the region of Abruzzo between 2008 and 2009 ⁽⁶⁾.
- (10) By letter dated 17 August 2012, the Commission informed the Italian authorities that it considered the measure to be a non-notified aid measure, which it would assess together with case SA.33083 (12/NN).

⁽⁴⁾ The letter mentioned measures linked to earthquakes affecting the regions of Umbria and Marche in 1997, Molise and Puglia in 2002, and Abruzzo in 2009, or any other similar measures put in place by Italy.

⁽⁵⁾ Record (*verbale di udienza*) of the hearing before the ordinary court of Vercelli, 19 June 2012, making a request for information regarding the proceeding pending in case SA.33083 (11/CP).

⁽⁶⁾ According to ISTAT (Istituto Nazionale di Statistica), GDP fell from EUR 26 314,5 million in 2008 to EUR 25 343,2 million in 2009 (i.e. minus 3,7 %).

- (11) As the legal basis had entered into force before the Commission had taken a decision authorising the scheme, the measure was entered in the Commission's State aid register as non-notified aid under the number SA.35083 (12/NN).
- (12) On the basis of information provided in the notification, the Commission decided to divide the case, separating the agricultural sector. The present Decision, therefore, does not cover activities connected with the production, processing and marketing of agricultural products as listed in Annex I of the Treaty, with the exception of fisheries and aquaculture products.

Joint proceeding in State aid cases SA.33083 (12/C) (ex 12/NN) and SA.35083 (12/C) (ex 12/NN) following the initiation of the procedure laid down in Article 108(2) of the TFEU

- (13) By letter dated 17 October 2012 the Commission informed Italy that it had decided to initiate the procedure laid down in Article 108(2) of the TFEU in respect of the aid measures ⁽⁷⁾. The cases were registered respectively under numbers SA.33083 (12/C) (ex 12/NN) and SA.35083 (12/C) (ex 12/NN).
- (14) The Commission's decision to initiate the procedure ('the opening decision') was published in the *Official Journal of the European Union* ⁽⁸⁾ and interested parties were invited to submit their comments on the measures.
- (15) By letter of 13 November 2012 the Italian authorities requested an extension of the deadline for the submission of their comments. By letter of 15 November 2012, the Commission agreed to the request.
- (16) Italy submitted its comments on 11 January 2013. The Commission also received comments from four interested third parties: on 9 January 2013 from the law firm Studio Legale Prof. Avv. Mario P. Chiti ('Chiti'), on 10 January 2013 from the law firm Studio Legale Avvocato Roberto Preve — Katia Gavioli ('Preve-Gavioli'), and on 11 January 2013 from the industrial federation Confindustria. On 31 January 2013, after the expiry of the deadline of one month following the publication of the opening decision in the *Official Journal*, the Commission received comments from the trade union organisation CGIL L'Aquila.
- (17) On 17 January 2013, the Commission forwarded to the Italian authorities all the observations received from interested third parties within the deadline of one month following the publication of the opening decision in the *Official Journal*, and asked them to comment. Italy replied on 11 March 2013 that it had no comment to make on the third parties' observations.
- (18) On 23 March 2013 the Commission asked for clarification of the information received from Italy. Italy replied on 24 and 30 April 2013. On 12 June 2014 the Commission asked for further information, and sent a reminder on 17 October 2014. Italy replied to the request and the reminder by providing information on 20 and 24 June, 11 July, 4 August and 29 October 2014.

2. DESCRIPTION OF THE MEASURES

Measures and legal bases

- (19) The measures and schemes listed below are designed to reduce the taxes payable by undertakings based or otherwise located in areas affected by various natural disasters in Italy since the year 1990, along with their compulsory social insurance contributions (payable to the National Institute for Social Insurance (*Istituto Nazionale per la Previdenza Sociale* — 'INPS') and premiums for compulsory insurance against accidents at work (payable to the National Institute for Insurance against Accidents at Work (*Istituto Nazionale per l'Assicurazione contro gli Infortuni sul Lavoro* — 'INAIL') (hereinafter referred to together as 'contributions').

⁽⁷⁾ See footnote 3.

⁽⁸⁾ See footnote 3.

Measures linked to the earthquake in eastern Sicily in 1990

- (20) Following the earthquake that hit eastern Sicily (the provinces of Siracusa, Catania and Ragusa) on 13-16 December 1990, the Italian authorities adopted a series of decisions and laws in the years from 1990 until 2002 granting to all undertakings ⁽⁹⁾ located in the municipalities affected by the earthquake ⁽¹⁰⁾ a suspension and deferral of payment of taxes and contributions, or permission to pay in instalments.
- (21) In 2001 a law provided that those who had still not paid their taxes or contributions could rectify their position (i.e. meet their payment obligations) by paying the full amounts still due, increased by 15 %, by 28 December 2001 ⁽¹¹⁾.
- (22) However, in 2002 Italy enacted legislation ⁽¹²⁾ allowing those who had still not paid their taxes for the years 1990, 1991 and 1992 to rectify their position automatically by paying only 10 % of the amount still due by 16 March 2003 ⁽¹³⁾. This Law No 289 of 27 December 2002, in other words, introduced the possibility of a 90 % rebate on amounts due in taxes to the State.
- (23) New laws in 2003 and 2004 ⁽¹⁴⁾ extended this possibility until 16 April 2004.
- (24) Under a new law enacted in 2005 ⁽¹⁵⁾, which referred back to the 2002 law ⁽¹⁶⁾, undertakings that had still not paid social security contributions (to INPS) and premiums for insurance against accidents at work (to INAIL) for the years 1990, 1991 and 1992 were allowed to rectify their position automatically by paying only 10 % of the amounts still due. The budget provided for this measure was EUR 52 million ⁽¹⁷⁾.
- (25) A law of 2007 extended the deadline for payment to 31 December 2007, but required a payment of 30 % of the amount still due in taxes ⁽¹⁸⁾. A further law of 2007 extended the deadline for payments to 30 June 2008, and re-established the previous position that required payment of only 10 % of the amount still due ⁽¹⁹⁾.

Measures linked to the floods in northern Italy in 1994

- (26) Similarly, following the floods in northern Italy in November 1994 (affecting 257 municipalities in the regions of Piedmont, Lombardy, Emilia-Romagna, Liguria, Tuscany and Veneto), the Italian authorities adopted a series of laws granting suspension and deferral of payment of taxes and contributions to undertakings ⁽²⁰⁾ that had suffered heavy damage ⁽²¹⁾ as a result of the floods.
- (27) In 2003, as in the case of the earthquake in eastern Sicily, Italy offered undertakings affected by the 1994 floods the chance to rectify their position by paying only 10 % of the amount due in taxes and contributions for the period 1995, 1996 and 1997 by July 2004 ⁽²²⁾.

⁽⁹⁾ Including undertakings in the industrial, commercial, crafts and agriculture sectors having an activity in the area affected by the earthquake.

⁽¹⁰⁾ Identified by an order (*decreto*) of the Prime Minister dated 15 January 1991.

⁽¹¹⁾ Article 138 of the Finance Law for 2001, as amended by Decree-law No 355 of 28 September 2011.

⁽¹²⁾ Law No 289 of 27 December 2002 (the Finance Law for 2003), Article 9(17).

⁽¹³⁾ In a single payment or, for sums above EUR 5 000, in instalments.

⁽¹⁴⁾ Article 23-*decies*(5) of Decree-law No 355 of 24 December 2003, converted into statute by Law No 47 of 27 February 2004 and by the Ministerial Order (*decreto*) of 8 April 2004.

⁽¹⁵⁾ Law No 266 of 23 December 2005 (the Finance Law for 2006), Article 1(363).

⁽¹⁶⁾ See footnote 12.

⁽¹⁷⁾ Law No 81 of 11 March 2006 converting into statute Decree-law No 2 of 10 January 2006.

⁽¹⁸⁾ Article 3-*quater*(2) of Law No 17 of 26 February 2007 converting into statute Decree-law No 300 of 28 December 2006.

⁽¹⁹⁾ Law No 248 of 31 December 2007, Article 36-*bis*.

⁽²⁰⁾ Excluding undertakings in the banking and insurance sector.

⁽²¹⁾ Damage was considered to be 'heavy' (*rilevante*) within the meaning of Article 16-*bis* of Law No 22 of 21 January 1995, which converted into statute Decree-law No 646 of 24 November 1994, if it exceeded one sixth of the income declared for the tax year 1993 and was in any event no less than LIT 2 million (approximately EUR 1 032,39).

⁽²²⁾ Law No 350 of 24 December 2003 (the Finance Law for 2004), Article 4(90).

- (28) Further laws of 2007 extended the deadline for payment of amounts still due in taxes and contributions to 31 March 2008 ⁽²³⁾.

Similar measures linked to other natural disasters in Italy which occurred between 1997 and 2002

- (29) In recent years, according to information available to the Commission, Italy has allowed similar reductions in other areas affected by natural disasters.
- (30) In 2006 Italy introduced ⁽²⁴⁾ a 50 % rebate on taxes and contributions ⁽²⁵⁾ for undertakings having their registered office or place of business in the municipalities of the province of Catania, Sicily, affected by the earthquake and eruptions of Mount Etna that took place in 2002 ⁽²⁶⁾.
- (31) In 2008, Italy introduced a 60 % rebate on taxes and contributions for undertakings having their registered office or place of business in the municipalities in the regions of Umbria and Marche affected by the earthquake in 1997 ⁽²⁷⁾.
- (32) In 2008, Italy introduced a 60 % rebate on taxes and contributions for undertakings having their registered office or place of business in the municipalities in the regions of Molise and Puglia affected by the earthquake in 2002 ⁽²⁸⁾.
- (33) The same 60 % rebate on taxes and contributions was introduced in 2011 for undertakings having their registered office or place of business in the municipalities in the region of Abruzzo affected by the earthquake of 6 April 2009 (for more detail see the next point) ⁽²⁹⁾.

Notified aid measure SA.35083 (12/NN) linked to the earthquake in Abruzzo in 2009

- (34) The measure notified by the Italian authorities and registered by the Commission under the number SA.35083 (12/NN) (see recital 8) provides for aid in the form of reduced taxes and contributions linked to the earthquake in Abruzzo in 2009.
- (35) Following the earthquake which hit the region of Abruzzo (the regional capital L'Aquila and several other municipalities) on 6 April 2009, the Italian authorities adopted a series of decisions and laws ⁽³⁰⁾ granting all undertakings ⁽³¹⁾ located in the municipalities affected by the earthquake ⁽³²⁾ a suspension and deferral until 30 November 2009 of the payment of taxes and contributions. This deadline was extended by further enactments to 30 June 2010 ⁽³³⁾, to 15 December 2010 ⁽³⁴⁾, to 31 October 2011 ⁽³⁵⁾ and finally to 16 December 2011 ⁽³⁶⁾.

⁽²³⁾ Article 3-*quater*(1) of Law No 17 of 26 February 2007 converting into statute Decree-law No 300 of 28 December 2006; Decree-law No 248 of 31 December 2007, Article 36-*bis*.

⁽²⁴⁾ Law No 296 of 27 December 2006, Article 1(1011), referring to order (*ordinanza*) of the Prime Minister No 3442 of 10 June 2005, in turn referring to order of the Prime Minister No 3254 of 29 November 2002.

⁽²⁵⁾ In Law No 296 of 27 December 2006, Article 1(1011) speaks of 'any tax or contribution ... reduced to 50 %'.

⁽²⁶⁾ Article 5 of Order of the Prime Minister No 3254 of 29 November 2002 suspended, for the first time, 'payments of social security and assistance contributions and of premiums for compulsory insurance against accidents at work and occupational illnesses' in respect of 'persons resident or having their registered office or place of business in the area'. Order of the Prime Minister No 3242 of 10 June 2005 confirmed the suspension for 'private employers having their registered office or place of business in the municipalities ...'.

⁽²⁷⁾ Article 2(1) of Decree-law No 61 of 8 April 2008, converted into statute by Law No 103 of 6 June 2008 (with financing provided for by Law No 244 of 24 December 2007, Article 2(109); Article 3(2) of Decree-law No 162 of 23 October 2008, converted into statute by Law No 201 of 22 December 2008.

⁽²⁸⁾ Article 6(4-*bis*) and (4-*ter*) of Decree-law No 185 of 29 November 2008, converted into statute by Law No 2 of 28 January 2009.

⁽²⁹⁾ Law No 183 of 12 November 2011, Article 33(28).

⁽³⁰⁾ Orders of the Prime Minister Nos 3753 and 3754 of 9 April 2009 and No 3780 of 6 June 2009; Decree-law No 39 of 28 April 2009, converted into statute by Law No 77 of 24 June 2009.

⁽³¹⁾ '... resident, having on the date of the earthquake' or 'having their residence for tax purposes or place of business ...'.

⁽³²⁾ Identified by order (*decreto*) of the Prime Minister No 3 of 16 April 2009.

⁽³³⁾ Order (*ordinanza*) of the Prime Minister No 3837 of 30 December 2009.

⁽³⁴⁾ Article 39 of Decree-law No 78 of 31 May 2010, converted into statute by Law No 122 of 30 July 2010.

⁽³⁵⁾ Decree-law No 225 of 29 December 2010, Article 3.

⁽³⁶⁾ Order (*decreto*) of the Prime Minister of 16 August 2011.

- (36) On 12 November 2011, Italy enacted a law stipulating that collection of the taxes and contributions suspended and deferred since the earthquake would recommence from January 2012, in 120 monthly instalments, and that the amount to be paid would be reduced to 40 % of the amount originally payable ⁽³⁷⁾.

Objective of the measures

- (37) The general objective of the schemes described (which reduced taxes and contributions by up to 90 %) was to support undertakings having their registered office or place of business in areas affected by natural disasters.

Geographical scope of the measures

- (38) The measures are applicable to areas in Italy affected by natural disasters, namely the earthquakes, floods or volcanic eruptions identified in the legislation.
- (39) The areas referred to in these measures are:
- the municipalities ⁽³⁸⁾ affected by the earthquake that hit eastern Sicily (the provinces of Siracusa, Catania and Ragusa) on 13-16 December 1990;
 - the municipalities ⁽³⁹⁾ in the regions of Piedmont, Lombardy, Emilia-Romagna, Liguria, Tuscany and Veneto affected by the floods of November 1994;
 - the municipalities ⁽⁴⁰⁾ in the province of Catania, Sicily, affected by the earthquake and eruptions of Mount Etna that took place in 2002;
 - the municipalities ⁽⁴¹⁾ in the provinces of Ancona (in the region of Marche) and Perugia (in the region of Umbria) affected by the earthquake in 1997;
 - the municipalities ⁽⁴²⁾ in the provinces of Campobasso (in the region of Molise) and Foggia (in the region of Puglia) affected by the earthquake in 2002;
 - the municipalities ⁽⁴³⁾ in the region of Abruzzo affected by the earthquake of 6 April 2009.

Beneficiaries

- (40) The schemes are open to undertakings operating in all sectors, including agriculture, forestry, fisheries and aquaculture ⁽⁴⁴⁾, with the exception of the measure linked to the floods in northern Italy in 1994, which excludes undertakings in the banking and insurance sector.
- (41) In the case of the earthquakes and volcanic eruptions in Sicily, Umbria, Marche, Molise, Puglia and Abruzzo, the beneficiaries are all undertakings having their registered office or place of business in the municipalities affected by the natural disaster that are identified by the specific legislation.
- (42) In the case of the floods in northern Italy, the beneficiaries are undertakings based or operating in the municipalities affected by the natural disaster, but only if they can prove that they have suffered heavy damage ⁽⁴⁵⁾.

⁽³⁷⁾ Law No 183 of 12 November 2011 (the Stability Law for 2012), Article 33(28).

⁽³⁸⁾ Identified by an order (*decreto*) of the Prime Minister of 15 January 1991.

⁽³⁹⁾ Identified by two orders of the Prime Minister of 26 and 29 November 1994.

⁽⁴⁰⁾ Identified by an order of the Prime Minister of 29 October 2002.

⁽⁴¹⁾ Identified by orders (*ordinanze*) Nos 2668 or 28 September 1997, 2694 of 13 October 1997 and 2719 of 28 November 1997.

⁽⁴²⁾ Identified by orders (*decreti*) of the Prime Minister of 31 October 2002 and 8 November 2002.

⁽⁴³⁾ Identified by orders (*decreti*) of the Prime Minister Nos 3 of 16 April 2009 and 11 of 17 July 2009.

⁽⁴⁴⁾ However, as mentioned at recital 7, the present Decision does not apply to activities linked to the production, processing and marketing of agricultural products as listed in Annex I of the Treaty, with the exception of fisheries and aquaculture products.

⁽⁴⁵⁾ For the definition of 'heavy' damage, please see recital 26.

Duration of the measures

- (43) The Commission considers that the schemes introducing the rebates started to run when their legal bases entered into force. The Commission acknowledges that the implementation of the measures may have begun at a different time, as provided in the implementing measures (such as the orders implementing the various legal bases, see the comments from Italy on the opening decision summarised in recitals 87 to 94).
- (44) The Commission considers that the rebate measures entered into force on the following dates:
- in the case of the earthquake of 13-16 December 1990 in eastern Sicily (the provinces of Siracusa, Catania and Ragusa), 1 January 2003 for taxes ⁽⁴⁶⁾ and 1 January 2006 for contributions ⁽⁴⁷⁾;
 - in the case of the 1994 floods in northern Italy, 1 January 2004 ⁽⁴⁸⁾;
 - in the case of the 2002 earthquake and eruptions of Mount Etna, 1 January 2007 ⁽⁴⁹⁾;
 - in the case of the 1997 earthquake in the regions of Umbria and Marche, 1 January 2008 ⁽⁵⁰⁾;
 - in the case of the 2002 earthquake in the regions of Molise and Puglia, 29 November 2008 ⁽⁵¹⁾; and
 - in the case of the 2009 earthquake in the region of Abruzzo, 1 January 2012 ⁽⁵²⁾.
- (45) As for the period for which these rebates were applicable, the periods of suspension of the payment of taxes and contributions are referred to in the respective legislation. The Commission takes note of the fact that the various schemes applied to different periods for the different types of taxes and contributions. On the basis of information provided by Italy to the Commission during the formal investigation phase (see Italy's comments on the opening decision summarised in recitals 87 to 94), these periods were as follows.
- (a) In the case of the earthquake in eastern Sicily (the provinces of Siracusa, Catania and Ragusa) on 13-16 December 1990, the period of suspension spans the years 1990, 1991 and 1992. The Italian Revenue Agency (*Agenzia delle Entrate*) speaks of the period 13 December 1990 until 31 July 1993, and according to both the INPS and the INAIL the period of suspension for contributions was 13 December 1990 until 31 December 1992.
 - (b) In the case of the floods in northern Italy in November 1994, the legislation indicates as the reference period the years 1995, 1996 and 1997, while the Revenue Agency speaks of the period 4 November 1994 until 31 October 1995; the INPS sets the end of the period at 30 November 1995; and according to the INAIL the whole period extended from 1 January 1995 until 31 December 1997.
 - (c) In the case of the earthquake in Umbria and Marche in 1997, the relevant suspension period would appear to be from 26 September 1996 until 30 June 1999 (31 March 1998 for certain beneficiaries).
 - (d) In the case of the earthquake in Molise and Puglia in 2002, the Revenue Agency states that the suspension period began on 31 October 2002 and ended on 30 June 2008, while the INPS and the INAIL indicate the period from 31 October 2002 until 31 December 2007.
 - (e) In the case of the earthquake and eruptions of Mount Etna that took place in 2002, the suspension period was from 29 October 2002 until 31 March 2004.
 - (f) In the case of the Abruzzo earthquake in 2009, the relevant suspension period depends on the nature of the beneficiary: for all undertakings with an annual turnover above EUR 200 000, the period of application would appear to be from 6 April 2009 until 3 June 2010; for undertakings with an annual turnover below

⁽⁴⁶⁾ The date of entry into force of Law No 289 of 27 December 2002 (the Finance Law for 2003).

⁽⁴⁷⁾ The date of entry into force of Law No 266 of 29 December 2005 (the Finance Law for 2006), Article 1(363).

⁽⁴⁸⁾ The date of entry into force of Law No 350 of 24 December 2003 (the Finance Law for 2004).

⁽⁴⁹⁾ The date of entry into force of Law No 296 of 27 December 2006 (the Finance Law for 2007).

⁽⁵⁰⁾ The date of entry into force of Law No 244 of 24 December 2007 (the Finance Law for 2008).

⁽⁵¹⁾ The date of entry into force of Law No 185 of 29 November 2008 (the Crisis Measures Law for 2009).

⁽⁵²⁾ The date of entry into force of Law No 183 of 12 November 2011 (the Stability Law for 2012), and specifically of Article 33(28), notified by the Italian authorities in case SA.35083 (12/NN).

EUR 200 000, and for individuals with income from business activity or self-employment, the period would appear to be 6 April 2009 until 15 December 2010.

- (46) As regards the duration of the rebate measures, each legal basis indicates a different final deadline after which the reduction is no longer to be available. The Commission's understanding is that the period of application was extended as a result of the judgments of the Italian Supreme Court of Cassation, as explained below in recitals 49 to 53 (see also Italy's comments on the opening decision summarised in recitals 91 to 93).

Eligible costs

- (47) The costs eligible under the measures are taxes, compulsory social security contributions (payable to the INPS) and compulsory premiums for insurance against accidents at work (payable to the INAIL) to be paid by undertakings in a defined period of time following the natural disaster (as determined in the legal basis of each measure).

Form of the aid and aid intensity

- (48) The aid is awarded in form of a rebate on taxes and contributions. The rebate amounts to 90 % for the measures for Sicily and northern Italy, to 60 % for Marche, Umbria, Molise, Puglia and Abruzzo, and to 50 % for Catania. The outstanding balance can be settled in one payment or in instalments (e.g. up to 120 monthly instalments in the case of the measure for Abruzzo). These instalments sometimes include interest payments, depending on the individual measure.

Judgments of the Supreme Court of Cassation

- (49) The request for information from the ordinary court of Cuneo (see recital 1) also brought to the Commission's attention a number of judgments delivered by the Italian Supreme Court of Cassation in 2007 and 2010, in which the Court held that the reduction to 10 % of the amounts due in taxes and contributions had to be applied to all those eligible even if in the meantime they had already paid the full amount ⁽⁵³⁾.
- (50) In effect the Supreme Court of Cassation held that all undertakings eligible for the benefit of the measures for Sicily or northern Italy were entitled to the same rebate of 90 % on taxes and contributions: otherwise there would be an 'unjustified disparity in treatment'.
- (51) The interpretation given by the Supreme Court of Cassation was confirmed by the Italian authorities in their letters of 7 December 2011 and 25 July 2012. In this last letter the Italian authorities refer to a further judgment of the Supreme Court of Cassation, delivered in 2012, which held that an appeal brought by the Revenue Agency was inadmissible because there was already settled case-law ⁽⁵⁴⁾.
- (52) The Commission is aware of the importance of these judgments for numerous cases pending before various courts in Italy in which proceedings have been brought by parties potentially benefiting under the different measures.
- (53) In the light of the judgments of the Supreme Court of Cassation, the measures would seem to be applicable retrospectively for the benefit of all the undertakings, including those that paid taxes and contributions in the ordinary way, at least in the case of the measures for eastern Sicily and northern Italy to which the judgments refer. Thus there would seem to be no time-limit for the application of the schemes, as long as an undertaking can prove that it is entitled to the aid.

⁽⁵³⁾ Judgment of the Supreme Court of Cassation, Fifth Civil Division, 1 October 2007, No 20641; judgment of the Supreme Court of Cassation, Labour Division, 7 May 2010, No 11133; judgment of the Supreme Court of Cassation, Labour Division, 10 May 2010, No 11247.

⁽⁵⁴⁾ Judgment of the Supreme Court of Cassation, 12 June 2012, No 9577.

3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION

- (54) The Commission initiated the formal investigation procedure laid down in Article 108(2) of the TFEU into the measures in question, as described in Section 2 of this Decision, because they appeared to constitute State aid within the meaning of Article 107(1) of the TFEU. The Commission also issued a suspension injunction under Article 11(1) of Council Regulation (EC) No 659/1999 requiring Italy to suspend all payments under any of the aid measures referred to in cases SA.33083 (12/NN) and SA.35083 (12/NN) ⁽⁵⁵⁾.
- (55) In the decision to initiate the Article 108(2) procedure ('the opening decision') ⁽⁵⁶⁾, the Commission considered the measures in the light of the exemption in Article 107(2)(b) of the TFEU, which states that 'aid to make good the damage caused by natural disasters or exceptional occurrences' is compatible with the internal market.
- (56) The Commission also considered whether the measures might qualify for any of the other exemptions in Article 107(2) and 107(3) of the TFEU.

Unlawfulness of the aid measures

- (57) In the opening decision, the Commission pointed out that the Italian authorities had not fulfilled their obligation to notify the schemes in accordance with Article 108(3) of the TFEU, as the Italian authorities had acknowledged during the preliminary investigation phase.

Analysis of the measures under Article 107(2) and 107(3) of the TFEU

- (58) The Commission has examined the aid schemes in the light of Article 107(2)(b) of the TFEU, which states that 'aid to make good the damage caused by natural disasters' is compatible with the internal market.
- (59) When assessing aid schemes of the kind contemplated in Article 107(2)(b), the Commission must verify (i) that the circumstances relied upon to justify the granting of aid do indeed constitute a natural disaster, and (ii) that the following conditions are met:
- the damage for which the compensation is granted is a direct consequence of the natural disaster;
 - the aid does not result in overcompensation of damage, but only makes good the damage caused by the natural disaster.
- (60) The Italian legislation identifies areas affected by natural disasters of three kinds: earthquakes, floods, and volcanic eruptions. The Commission has consistently taken the view that earthquakes, floods and volcanic eruptions constitute natural disasters within the meaning of Article 107(2)(b) of the TFEU ⁽⁵⁷⁾; consequently, undertakings that have suffered damage due to these natural disasters may in principle qualify for aid up to the amount of the damage suffered.
- (61) However, the schemes in question do not lay down any definition of damage (whether material or economic), nor do they establish any link between the aid and the damage suffered as a result of the natural disaster ⁽⁵⁸⁾. Furthermore, the schemes do not confine the compensation to the damage actually suffered by the beneficiaries, nor are the eligible costs determined on the basis of the damage suffered by the undertakings as a consequence of the natural disaster.

⁽⁵⁵⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1).

⁽⁵⁶⁾ See footnote 3.

⁽⁵⁷⁾ See Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

⁽⁵⁸⁾ With the partial exception of the measures linked to the 1994 floods in northern Italy, which set a minimum level of damage as a condition of any aid.

Doubts and grounds for initiating the investigation

- (62) In light of the above and on the basis of the available information, given that the measures had been implemented without being notified to the Commission, the Commission considered that they constituted unlawful aid within the meaning of Article 1 of Regulation (EC) No 659/1999.
- (63) Furthermore, as a consequence of its preliminary assessment, the Commission seriously doubted whether the measures introduced by Italy since 2002 were compatible with the internal market. It was not possible to conclude from the preliminary assessment that the aid measures were in line with the principles of the TFEU, and in particular with Article 107(2)(b), which allows aid to make good the damage caused by natural disasters ⁽⁵⁹⁾. In particular, the Commission doubted whether the information provided by the Italian authorities was enough to demonstrate that the measures in question were, by their nature and operational arrangements, designed to make good the damage caused by natural disasters.
- (64) In particular, the Commission was unable to conclude from the operational arrangements described in the measures that:
- the beneficiaries were undertakings that had in fact suffered damage (with the partial exception of the measure for northern Italy, which required that the undertaking must have suffered a minimal amount of damage, see recital 26),
 - the damage was caused exclusively by the natural disasters referred to in the legislation,
 - the aid given to the undertaking was confined solely to making good the damage caused by the natural disaster, excluding any overcompensation of the damage suffered by the individual beneficiary.
- (65) Moreover, the Commission doubted whether any of the other exemptions in Articles 107(2) and 107(3) of the TFEU were applicable ⁽⁶⁰⁾.
- (66) The Italian authorities and interested third parties were therefore asked to provide in their comments on the opening decision all information necessary to carry out a full assessment, and to submit the appropriate documentation to the Commission.

4. COMMENTS FROM INTERESTED PARTIES

Comments submitted by the law firm Chiti

- (67) Chiti is a law firm based in Florence which represents 58 private undertakings and public organisations and administrative departments affected in various ways by the floods in Piedmont in 1994. The aim of its submission is to demonstrate that the case of Piedmont is different from other cases of benefits granted after natural disasters.
- (68) After giving an account of the facts and the legislative developments in the case, Chiti focuses on the judgments of the Supreme Court of Cassation. It contends that following the judgments given in 2007, 2010 and 2012, all undertakings affected by the floods in Piedmont have been able to rectify their position *ex post* by paying 10 % of the amount due or, if they had already paid the full amount, by requesting a refund of 90 %, as provided by Article 3(90) of Law No 350/2003. Of the 233 court cases regarding compensation for damage caused by the floods, 96 have ended with judgments that are now definitive, while most of the others are suspended as a result of the suspension injunction issued by the Commission on 17 October 2012.
- (69) Chiti states that in order to obtain the benefit of these schemes in the courts, the undertakings have had to demonstrate *in concreto* the amount of the actual damage and the causal link between the event and the damage.

⁽⁵⁹⁾ In Case C-278/00 *Greece v Commission* [2004] ECR I-03997, the Court of Justice held that 'only economic disadvantages directly caused by natural disasters or by exceptional occurrences qualify for compensation as provided for in that provision' (paragraph 82 of the judgment) and 'A provision with so broad a scope cannot be regarded as aid to make good the damage caused by natural disasters or exceptional occurrences' (paragraph 85).

⁽⁶⁰⁾ Opening decision, points 3.3.2 and 3.3.3.

The evidence accepted has consisted of technical assessments ordered by the court, certified reports by experts, or official documents from the INPS and the INAIL. The undertakings have obtained compensation only for the actual damage they are able to prove or for loss established by the court itself.

- (70) Chiti submits that the compensation scheme for damage caused by the floods in Piedmont in 1994 is related to a natural disaster, and ought therefore to be examined under Article 107(2)(b) of the TFEU. If measures of this kind are to be compatible with the internal market, it must be shown that there is a causal link between the event and the damage, and that there is no overcompensation of the damage. As far as the profile of the clients it represents is concerned, Chiti claims that the compensation has not been granted indiscriminately to every undertaking in Piedmont, but only to those meeting the following conditions:
- (a) The undertaking must be located in the areas identified as flooded in specific government orders. In this sense the measures are selective, but in Chiti's view they do not fall under Article 107(1) of the TFEU. The geographical delimitation of the aid derives not from a political or economic assessment (e.g. referring to unemployment rates or to less developed areas), but from unpredictable natural events that are not under human control. The beneficiaries are identified on the basis of criteria that are outside the exercise of any sort of discretion. There is in fact no selectivity, because there is no distortion of competition: the aim of the legislation is to remedy the disadvantage to undertakings affected by the natural disaster. This is a consequence of the principle of equal treatment.
 - (b) In order to obtain the compensation there must be proof that the damage was 'heavy'. This condition distinguishes the case of Piedmont from other cases. The only loss that may be compensated is material damage above the threshold of LIT 2 billion fixed by the law, which must be established by certified technical assessments.
 - (c) There must be a causal link between the event and the damage. According to Italian law, the demonstration of a causal link is an essential prerequisite for obtaining compensation; hence the undertakings concerned have had to establish a causal link before a court in every case. This means that there has not been any overcompensation, since the damage has had to be shown in a certified report or an official report from the authorities involved. Moreover, it is a general principle of Italian law that compensation for extra-contractual loss must never be a source of gain (Article 2043 of the Civil Code).
- (71) In the case of Piedmont, therefore, Chiti asks the Commission to reconsider its general statement that the measures under investigation do not appear to be aimed at making good the damage caused by natural disasters. According to Chiti the Piedmont case has features that distinguish it from the other cases treated jointly in the opening decision. Chiti further argues that the benefits granted to the undertakings concerned are compatible with the internal market under Article 107(2)(b) of the TFEU because:
- the compensation relates exclusively to damage resulting directly from the natural disaster;
 - the damage is quantified in terms of its importance to the undertaking concerned;
 - there has been no overcompensation, since the compensation has been set exactly in line with the proven damage;
 - there is no overlapping with other benefits.
- (72) In the event that the aid were to be considered incompatible, and its recovery were to be ordered, Chiti takes the view that Article 15 of Regulation (EC) No 659/1999 would apply. Under that provision, Chiti argues, the Commission cannot order the recovery of aid once 10 years have elapsed from the day on which the aid was awarded to the beneficiary. The benefits were granted beginning in the period immediately after the floods in November 1994, under Decree-law No 646 of 24 November 1994. The arrangements for assisting the undertakings affected by the floods in Piedmont were merely refined by successive laws adopted in the period between 2003 and 2007. In other words, the opening decision refers to 1 January 2004 as the starting date for the application of the benefits, but the moment when the aid was actually granted in the case of Piedmont was November 1994.

- (73) Chiti contends that Article 14(1) of Regulation (EC) No 659/1999 also applies: it provides that the Commission is not to require recovery of the aid if this would be contrary to a general principle of Union law. Two principles are at stake here. First, the principle of legal certainty requires respect for final judgements delivered by national courts, and prevents any possibility of recovery of the sums received by the undertakings. While recognising that the principle of *res judicata* has no absolute value in Union law, Chiti considers that the special conditions that led the Court of Justice to its judgments on this principle in the past ⁽⁶¹⁾ do not apply in the case at hand. Second, Chiti invokes the principle of legitimate expectations: from late 1994 until 2011 not a single national or Union authority raised questions about the lawfulness of the benefits. Throughout that entire period the undertakings concerned received benefits which the competent authorities did not consider to be State aid. Chiti concludes that this is a typical situation in which the principle of legitimate expectations applies.

Comments submitted by the law firm Preve-Gavioli

- (74) Preve-Gavioli is a law firm based in Turin. After summarising the development of the Italian legislation under consideration and the circumstances leading to the Commission proceeding, Preve-Gavioli submits that the benefits conferred upon the undertakings affected by the floods in Piedmont in 1994 are not selective, as they do not in any way favour specific enterprises by relieving them of costs that they would usually have to bear. The measures are aimed only at compensating undertakings for damage suffered as a result of a natural disaster. Moreover, the benefits provided for by law do not strengthen the competitive position of the beneficiaries over their competitors, since the compensation they have received has merely enabled them to return to the market on an equal footing with undertakings that did not suffer any damage or income loss. In other words, the benefits do not distort competition in any way, but correct a situation of financial disadvantage, and restore the commercial competitiveness of the undertakings affected by the floods.
- (75) Preve-Gavioli takes the view that the benefits granted to the undertakings affected by the floods in Piedmont in 1994 cannot be described as State aid, because the conditions set in Article 107(1) of the TFEU are not met. However, even if the measures were to be regarded as State aid, they should be classed as aid to compensate the damage caused by a natural disaster under Article 107(2)(b). They are therefore compatible with the internal market under the terms of the Treaty itself, and are not subject to the prior notification obligation or to prior assessment by the Commission.

Comments submitted by Confindustria

- (76) Confindustria is the largest Italian employers' federation, founded in 1910. It is a voluntary organisation comprising approximately 150 000 undertakings that employ a total of nearly 5 500 000 people. It has submitted comments as an interested party under Article 108(2) of the TFEU both in case SA.33083 and in case SA.35083.
- (77) Confindustria is concerned that Italy's failure to comply with its obligation to notify State aid to the Commission might penalise undertakings that have availed themselves in good faith of measures aimed at repairing the damage caused by natural disasters.
- (78) Confindustria submits that the Commission should consider some facts of a general nature relating to the overall context. In particular, the measures relate to events that date back 20 years (longer in some cases); for this reason, current practice with regard to decisions on State aid does not provide proper protection of the interested parties. Even where one has doubts about the compatibility of certain measures adopted by a national legislature,

⁽⁶¹⁾ Case C-119/05 *Ministero dell'Industria, del Commercio e dell'Artigianato v Lucchini* [2007] ECR I-6199 (ECLI:EU:C:2007:434).

it is difficult to obtain information from the competent authorities; and in the current economic context most enterprises, especially SMEs, continue to have serious problems of liquidity. To order the recovery of aid granted decades ago at this stage would jeopardise the survival of many of these undertakings. Moreover, Confindustria does not understand the reasons for the doubts regarding the compatibility of the measures.

- (79) Confindustria suggests that an alternative solution should be found in order to avoid penalising the undertakings concerned in an unjustified and dangerous fashion.
- (80) First, Confindustria considers that for every measure and case concerned, a careful assessment should be made of the existence of exceptional circumstances that might show that there was no aid or that any aid should not be recovered. The exceptional circumstances are (i) the ten-year limitation period, (ii) the principle of the protection of legitimate expectations, and (iii) the applicability of exemptions other than those set out in Article 107(3)(c) TFEU.
- (81) Second, Confindustria asks the Commission to specify expressly in its decision in which cases money paid to enterprises as compensation for damage directly caused by natural disasters can be regarded as compatible with the Treaty. The measures at issue here are targeted at undertakings directly affected by events that the Commission has consistently considered to fall within the definition of natural disasters: earthquakes, floods, volcanic eruptions, etc. The wording of the legislation on which the measures are based makes it clear that they were adopted by the Italian authorities with the aim of making good the damage caused by these natural events. Confindustria argues that the beneficiaries are undertakings that suffered real damage as a result of natural disasters. Although it was only in a few cases that the benefit was granted expressly to undertakings that had suffered 'heavy' damage, it should be acknowledged that the damage was heavy in other cases too: the very fact that an undertaking is located in an area affected by a natural disaster necessarily leads to economic loss, independently of any material damage. Confindustria also contends that there may be cases in which the beneficiaries have documents demonstrating the amount of damage effectively suffered, and showing that the loss is significantly higher than the compensation received. As a result, Confindustria believes that all the measures under investigation fall within the scope of Article 107(2) of the TFEU.
- (82) As for the conditions relied upon by the Commission, Confindustria acknowledges that for some of the measures at issue a formal definition of damage would seem to be missing; the same applies to the determination of the correlation and proportion between the amount of damage suffered and the amount of the aid. However, Confindustria suggests that such a correlation does exist *de facto* — that in the event of a natural disaster all undertakings suffer damage (at least economic loss), and that a simplified method for estimating the damage and the corresponding aid could be devised. Such a method should take into account, for example, the capacity to create revenue and the number of people employed by each undertaking. The problem is therefore related to cases of overcompensation rather than to the compatibility of the measures with the State aid rules. It is important to avoid a situation in which action against a few cases of overcompensation might lead to the penalisation of a large majority of undertakings which have received benefits in good faith and in compliance with the law. Confindustria therefore suggests that undertakings should be allowed to keep the aid despite the fact that at the time of its approval, if the Italian authorities had complied with the Treaty and the notification obligation, the aid ought to have been notified to the Commission.
- (83) In sum, Confindustria asks the Commission:
- (a) to confirm expressly that any decision of the Commission is without prejudice to specific cases of aid that are compatible on the basis of Article 107(2)(b) of the TFEU, the *de minimis* regulation, or other provisions;
- (b) to intensify formal or informal cooperation between, on the one hand, the Commission and the national authorities and, on the other hand, the beneficiary undertakings, to work out a method and a mechanism to prevent cases of overcompensation; this would avoid the recovery of aid allowed by the *de minimis* regulation and of aid that does in fact correspond to material and economic loss effectively suffered by beneficiaries;

- (c) to consider the advisability of introducing a simplified method of quantifying loss suffered as a result of natural disasters.

Comments submitted by Confederazione Generale Italiana del Lavoro (CGIL)

- (84) The Italian General Confederation of Labour (Confederazione Generale Italiana del Lavoro, CGIL) is the largest trade union organisation in Italy, with a membership of about six million. In response to the opening decision the CGIL branch in L'Aquila, Abruzzo ('CGIL L'Aquila'), submitted observations outside the deadline of one month following the publication of the decision. The Commission is not obliged to consider observations from interested third parties submitted after the deadline, but it may do so exceptionally, and will do so in this case.
- (85) CGIL L'Aquila considers that a suspension of the scheme of concessions introduced by Italy, a demand for full recovery of the sums granted and a requirement for certification of the damage suffered might push the undertakings concerned out of the market. This is all the more problematic as other cases of compensation for damage caused by natural disasters have been treated differently. As a result, L'Aquila, despite being the area hardest hit by the earthquake, still suffers from distorted competition as compared with competitors not affected by such a disaster. In sum, the suspension of the benefits and the absence of any graduation mechanism and of proper verification procedures (for which CGIL L'Aquila blames the State) may further weaken the local manufacturing sector, with all the associated negative consequences in terms of unemployment and social security.

5. COMMENTS FROM ITALY

- (86) In response to the opening decision, the Italian authorities submitted comments on 11 January 2013. The Commission departments received submissions from the following Italian authorities and agencies:
- (a) the Ministry of Economic Affairs and Finance;
 - (b) the Revenue Agency;
 - (c) the INPS;
 - (d) the INAIL;
 - (e) the Department of Civil Protection; but the Department of Civil Protection claims that it has no information of the kind requested in the decision.

Rebates and period of application for each area and measure

- (87) In paragraph 71 of the opening decision, the Commission requested the Italian authorities to provide it with information concerning 'the rebates for each area and measure, and the period for which the rebates are applicable'.
- (88) The INPS submits in the first place that the difficulties encountered by the Commission in identifying the exact suspension periods for payments in taxes and contributions (see Section 2.5 of the opening decision) derive from differences in the time-frames set in the rules laid down by each institution. A distinction has to be drawn between the duration of the suspension of payments of contributions (payable to the INPS and INAIL) and the duration of the suspension of tax payments (payable to the Revenue Agency). A further distinction has to be drawn between the periods of suspension of taxes and contributions and the periods of application of the rebate measures.
- (89) With regard to the starting date of the schemes, the INAIL argues that contrary to what the Commission says in paragraph 34 of the opening decision, the starting date of a scheme does not always coincide with the entry into

force of the legislation making provision for it. The starting date of the rebate measure may come at a later stage — in the case of Piedmont, only after a court judgment found that undertakings were entitled to rebates with retroactive effect. The Revenue Agency, on the other hand, agrees with the Commission that the beneficiary's entitlement to a tax advantage begins with the entry into force of the legislation that introduces the advantage.

- (90) The INPS and the INAIL provide precise periods for each scheme of reduction of contributions:
- (a) For the earthquake that hit **eastern Sicily** (the provinces of Siracusa, Catania and Ragusa) on 13-16 December 1990, documents prepared by the INPS and the INAIL identify the suspension period as 13 December 1990 to 31 December 1992. The period of availability of the rebate was 1 January 2006 to 30 September 2006 for payments below EUR 5 000 (to be paid in one instalment) or 1 October 2006 onwards for amounts above EUR 5 000 (to be paid in eight six-monthly instalments, with interest).
 - (b) For the floods in **northern Italy** in November 1994, the INPS identifies the suspension period as 4 November 1994 until 30 November 1995. In the view of the INAIL, however, the suspension period runs from 1 January 1995 to 31 December 1997, with reference to the years 1995, 1996 and 1997. In both cases, the period of availability of the rebates is said to be from 1 January 2004 onwards. However, the INPS specifies that the rebate on social insurance contributions applies only from the moment that the final court judgments become enforceable, and not automatically, as in the case of the INAIL.
 - (c) For the earthquake in **Umbria and Marche** in 1997, the document prepared by the INPS and the INAIL specifies that the suspension period runs from 26 September 1997 until 31 March 1998 for residents in 'municipalities in disaster areas' (*comuni disastrati*) identified in the legislation, and from 26 September 1997 until 30 June 1999 for residents in 'municipalities in damaged areas' (*comuni danneggiati*) likewise identified in the legislation. The INPS and the INAIL indicate that the rebate is available in respect of the period from 1 January 2009 until 30 June 2009. The Revenue Agency considers that the starting date for the application of the tax rebate is 23 October 2008, i.e. the date of the entry into force of Decree-law No 162/2008.
 - (d) For the earthquake in **Molise and Puglia** in 2002, the INPS and the INAIL submit that the suspension period runs from 31 October 2002 until 31 December 2007. Both institutions say that beneficiaries were able to apply the rebates from 1 January 2009 until 30 June 2009, following the extension of the application of the measures introduced for the 1997 earthquake in Umbria and Marche by Decree-law No 162 of 2008. The Revenue Agency says that the starting date for the application of the tax rebate is 29 January 2009, i.e. the date of the entry into force of Decree-law No 185 of 2008.
 - (e) In the case of the earthquake and eruptions of **Mount Etna** that took place in 2002, both the INPS and the INAIL say that the suspension period runs from 29 October 2002 until 31 March 2004, and that the period of the rebate runs from 1 January 2007 until 30 June 2008.
 - (f) For the earthquake in **Abruzzo** in 2009, the relevant period depends on the nature of the beneficiary: for undertakings with an annual turnover above EUR 200 000, the documents prepared by the INPS, the INAIL and the Revenue Agency say that the suspension period runs from 6 April 2009 until 30 June 2010; and for undertakings with an annual turnover below EUR 200 000, and for individuals who have an income from business activity or who are self-employed, the suspension period runs from 6 April 2009 until 15 December 2010 (and not 31 December 2010, as stated in paragraph 36(f) of the opening decision). The rebate is applicable from January 2012, but both INPS and INAIL declare in their submissions that the reduction applies only to aid that complies with the *de minimis* requirements, pending a Commission decision on aid going beyond the *de minimis* level.
- (91) In paragraph 71 of the opening decision, the Commission also requested Italy 'to confirm the Commission's understanding that, as a consequence of the latest judgments of the Italian Supreme Court of Cassation of 2007, 2010 and 2012 ... these measures could potentially make the aid available (without a limit in time) to all undertakings identified as beneficiaries under the legal basis for each measure.' Here the Italian authorities present two different views.

- (92) The INPS and the INAIL contend that the Commission's interpretation does not appear to be correct. In their opinion, although the Supreme Court of Cassation's judgments might potentially extend the aid without a limit in time to all beneficiaries identified under the relevant legislation, the judgments in fact merely make it clear that the benefit of the measures can be granted in two ways: if the undertaking has not yet paid, it need pay only 10 % of what is due; if it has already paid, it can obtain reimbursement of 90 % of what has been paid. The two institutions assert that this interpretation derives from the legislation that introduced the rebates. That legislation is *jus superveniens*, supervening law, which legitimises the refund of the amounts previously paid in excess. However, the INPS and the INAIL point out that in the first case (payment of 10 %) several judgments have found that taxpayers were not entitled to the benefit of the measure because they applied after the deadline of 31 July 2007 set by the law. In the second case (refund of 90 %), entitlement to the refund is subject to a period of limitation, which is normally 10 years from the moment when the entitlement can be exercised (Article 2946 of the Civil Code), i.e. from the entry into force of the law introducing the measure. Moreover, contrary to what is affirmed in paragraph 45 of the opening decision, the principles formulated by the Supreme Court of Cassation refer only to specific cases (Sicily and Piedmont) and cannot be applied generally to all other disasters, as suggested by the Commission.
- (93) The Revenue Agency takes the view that the Commission's interpretation is correct. As a general rule applications for a refund of tax made by those who have already paid must be submitted within 48 months of the date of the payment (Article 38 of Presidential Order No 602 of 20 September 1973). Nonetheless, recent rulings of the Supreme Court of Cassation have accepted that the beneficiaries are entitled to be refunded sums previously paid in excess, subject to the ordinary period of limitation referred to above.
- (94) With regard to the percentage rebate applicable to each measure and each tax or contribution, Italy confirms the percentages listed in Section 2.2 of the opening decision.

Combination of different natural disaster aid schemes

- (95) In paragraph 71 of the opening decision, the Commission requested the Italian authorities to indicate 'The existence (or not) of natural disaster aid schemes already providing the beneficiaries with aid aimed at making good the damage suffered as a consequence of that specific natural disaster.'
- (96) Of the three institutions that have submitted comments, only the INPS has replied to this question. It asserts that the value of the rebates has been strictly limited to the amounts actually due to the institution for the corresponding suspension periods. Thus the measures are confined to a percentage reduction in the contributions due. According to the INPS, therefore, the sums involved cannot overcompensate the eligible costs. The INPS states that the disaster aid schemes for the 2002 earthquake in Molise (aid scheme N 174a/2004) and for the 2009 earthquake in Abruzzo (aid scheme N 459a/2009) did not provide for any compensation in respect of labour costs (wages and contributions). Those schemes provided only for compensation for direct and indirect or economic damage deriving from a temporary suspension of economic activity caused by the disaster or by the need to relocate the activity following the disaster. But as far as contributions are concerned the aid schemes under discussion here apply only to undertakings which continued their operations after the disaster, and which would otherwise have had to pay the contributions required by law. Moreover, the aid schemes for both Molise and Abruzzo authorised by the Commission included measures for the monitoring of overlapping aid in order to exclude any possibility of overcompensation.

Estimate of damage for each beneficiary

- (97) In paragraph 71 of the opening decision, the Commission also asked 'if and how damage was estimated for each beneficiary located in the areas affected by the natural disasters, and whether the necessity and proportionality of the support has been considered at some moment in time, and in which manner.'

- (98) As with the previous point, only the INPS submitted a reply. The INPS affirms that the beneficiaries of the suspension of social security contribution payments consist of all undertakings operating in a specific geographic area identified by civil protection decisions. However, the legislation introducing the measures did not provide for any mechanism for verifying the existence of a causal link between the damage suffered and the measure.

Estimated number of beneficiaries of each measure and aid amounts

- (99) According to paragraph 72 of the opening decision, 'the Italian authorities are requested to provide the estimated number of beneficiaries of each measure and the aid amounts involved.'
- (100) In 2013 the INPS, the INAIL and the Revenue Agency provided figures for the estimated numbers of beneficiaries of the aid, but only the INPS and the INAIL also indicated the amounts granted.

Further information and clarification provided by Italy

- (101) Following the Commission's requests for clarification (see recital 18), the Revenue Agency replies that the taxes contemplated by the measures include all types of tax without distinction. The Agency also explains the difficulty of providing an exact estimate of the number of beneficiaries and the total amount of the rebates under the different measures: it says this is due to the absence of data in electronic form, mainly because applications for rebates have to be submitted on paper rather than through the electronic tax declaration system. It has been possible to perform an analysis on the basis of annual tax returns only for the measure in respect of the Abruzzo earthquake in 2009. Even there, however, the data cannot be extracted directly, but require a case-by-case analysis. A further complication is the fact that the data for the reduced social contributions include the amounts payable both by the employer and by the employee. A rebate on the amount due by the employee does not constitute State aid for purposes of Article 107(1) of the TFEU, because it benefits individuals rather than undertakings.
- (102) Only in 2014, after establishing a methodology for each agency involved in the analysis (the Revenue Agency, the INPS, the INAIL), was Italy finally in a position to produce an approximate overall estimate of the beneficiaries of the measures. It provided a number of tables showing beneficiaries and aid amounts. In its letter of 4 August 2014, Italy states that it has identified 80 577 beneficiaries. Of these, (i) 33 831 have received a rebate amounting to less than EUR 1 000, (ii) 66 704 have received a rebate amounting to less than EUR 10 000 and (iii) 75 469 have received a rebate amounting to less than EUR 100 000. Only 539 undertakings have received rebates amounting to more than EUR 200 000.
- (103) For the measures at issue in case SA.33083 (natural disasters between 1990 and 2002), the number of beneficiaries is approximately 59 500, of which 23 303 are no longer active. For the measure at issue in case SA.35083 (the Abruzzo earthquake in 2009), the number of beneficiaries is approximately 21 000, of which 4 000 are no longer active.

Comments submitted by Italy regarding supporting documentation for compensation for damage due to the natural disaster

- (104) In the same letter of 4 August 2014, Italy gives a detailed account of the difficulty of obtaining documents showing: (i) whether the beneficiaries of the measures under investigation have or have not suffered damage as a consequence of a natural disaster; (ii) whether or not the beneficiaries have been compensated for any such loss; and (iii) the amount of any such compensation received.
- (105) The Italian authorities consider that the opening decision did not explicitly require proof of the damage suffered by the beneficiaries of the measures under investigation. The Italian authorities did not, therefore, gather

documents proving the actual damage suffered by individual beneficiaries. The Italian authorities would need to take fresh steps to contact both public authorities (to verify whether compensation payments for damage had already been granted and/or paid out) and the beneficiaries of the measures under investigation (to verify whether they had suffered damage and whether they had been compensated for this damage by insurance companies).

(106) In its letter Italy explains the following:

- (a) In response to the Commission's specific request that Italy provide evidence of the damage suffered by the individual beneficiaries of the aid under investigation, the Italian authorities have launched an investigation to gather documents establishing losses due to natural disasters and any compensation granted by public or private bodies.
- (b) However, this investigation is to be carried out only in respect of beneficiaries still in business (excluding, therefore, those which have ceased their activity and are therefore no longer able to distort competition in the market).
- (c) A statement declaring the damage caused by the natural disaster was not one of the conditions for the granting of the alleged unlawful aid under investigation. Consequently, this documentation is not held by any of the administrative departments that have granted the aid (the Revenue Agency, the INPS and the INAIL). Further specific investigations would have to be launched in each of the areas concerned in respect of each of the measures under investigation.
- (d) These investigations concern documents relating both to the proof of damage and to the compensation possibly granted on that basis. Since a statement of damage caused by a natural disaster was not one of the conditions for the granting of the alleged unlawful aid under investigation, any evidence of damage required by public or private bodies in order to obtain compensation must refer to the event to which it relates and, therefore, also to the time when the event occurred.
- (e) The statement of damage must have been drawn up only when the damage was recent and still verifiable, since otherwise it would not be possible to establish that it was direct damage, or to verify the causal link with the natural disaster. Consequently, the search for documentation for any certificate or statement of damage, and for any possible compensation, is inseparably linked to the date when the natural disaster occurred.
- (f) The possibility of tracing documents providing proof of the damage suffered and compensation paid and received is limited by the legal requirements to keep and maintain records in Italy. Articles 2220 and 2946 of the Italian Civil Code require that records be kept for 10 years (and in some cases for less). It follows that administrative action to trace this documentation, more than 10 years after the disaster, would lack proper legal means of ensuring that beneficiaries and public authorities produce it.
- (g) The analysis of the national legal framework governing record-keeping suggests that it is objectively impossible to collect evidence of damage suffered by individual undertakings dating back more than 10 years, i.e. in any of the natural disasters covered by the measures under investigation other than the 2009 earthquake in Abruzzo, for which the 10-year period has not yet elapsed.

(107) With regard to the Abruzzo earthquake in 2009, which is the subject of case SA.35083 (12/C), the Italian authorities indicate that a precise and detailed inquiry will be needed in order to determine accurately both the identity of the beneficiaries and the amount of unlawful aid they have received. The data collected by Italy until 2014 also include a large number of individuals who may have benefited from the scheme in respect of taxes on revenues that are not related (in part or at all) to their business activity. Of the approximately 21 000 beneficiaries identified by Italy, 17 500 are individuals, for whom the data on taxes refer both to income from professional and business activity and to other forms of income. For all these a more detailed assessment would have to be carried out in order to quantify the extent to which the rebates they received should be regarded as State aid within the meaning of Article 107(1) of the TFEU, given that rebates that do not benefit undertakings do not constitute State aid.

- (108) Finally, Italy provided detailed information and documentation regarding the systemic impact of the Abruzzo earthquake of 2009 on the economic fabric of the region. The documentation includes macroeconomic data and lists of damaged local infrastructures.

6. ASSESSMENT OF THE MEASURES

State aid character of the measures

- (109) In the opening decision, the Commission took the view that the measures at issue appeared to constitute State aid (the measures being the rebate schemes introducing a reduction of up to 90 % of taxes and compulsory social security contributions and premiums for insurance against accidents at work payable by undertakings based or located in the areas affected by natural disasters: Article 9(17) of Law No 289 of 27 December 2012, as amended; Article 4(90) of Law No 350 of 24 December 2003, as amended; Article 1(363) of Law No 266 of 23 December 2005, as amended; Article 1(1011) of Law No 296 of 27 December 2006, as amended; Article 2(109) of Law No 244 of 24 December 2007, as amended; Article 6(4-bis) and (4-ter) of Decree-law No 185 of 29 November 2008, as amended; Article 33(28) of Law No 183 of 12 November 2011, as amended; and all the executive measures provided for in those Laws, referred to in recitals 20 to 36 of this Decision). In what follows the Commission will examine whether the measures under investigation do indeed constitute State aid within the meaning of Article 107(1) of the TFEU.
- (110) In order to assess whether the rebate measures constitute aid within the meaning of Article 107(1), it is necessary to determine whether they favour certain undertakings, whether the advantage is conferred by the State through State resources, and whether the measures are capable of affecting competition and trade between Member States.
- (111) As the rebates are granted only to undertakings having establishments in the geographical areas affected by certain types of natural disaster (earthquakes, volcanic eruptions and floods) (the areas are listed in recital 39), the measures are selective. By reducing taxes and contributions the Italian State relieves these undertakings of operating costs that they would have to bear in the normal course of business. Therefore, the undertakings benefit from an economic advantage which may distort or at least threaten to distort competition. As the measures cover undertakings that can be supposed to be involved in trade between Member States, they are capable of affecting such trade.
- (112) The support provided by public authorities through State resources takes the form of revenue forgone by the public authorities: the reduction in income tax reduces the tax revenue accruing to the State. Similarly, the reduction of contributions to be paid to State agencies (the INPS and the INAIL) requires an increased transfer of State resources to these agencies in order to compensate for their forgone revenue.
- (113) Therefore, as already provisionally concluded in the opening decision, all the measures adopted by Italy since 2002 which are the subject of State aid cases SA.33083 (12/C) and SA.35083 (12/C), and which reduce the charges for taxes and contributions by 90 %, 50 % or 60 % as the case may be, constitute State aid within the meaning of Article 107(1) of the TFEU.
- (114) The aid measures under investigation are in principle prohibited by Article 107(1), and may be considered compatible with the internal market only if they qualify for one of the exemptions laid down in the Treaty.
- (115) The Commission considers, however, that aid granted to individual undertakings under the measures in question does not constitute State aid if it satisfies all the tests in the applicable *de minimis* regulation⁽⁶²⁾.

⁽⁶²⁾ The applicable *de minimis* regulations are Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1), and Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45).

Unlawfulness of the aid measures

- (116) The measures granting the aid have already entered into force: the Commission regrets that the Italian authorities have not fulfilled their obligation to notify the schemes in accordance with Article 108(3) of the TFEU.

Appraisal of the compatibility of the aid with the internal market in the light of the comments by interested parties

- (117) Having concluded that the rebate schemes referred to in recital 109 constitute State aid within the meaning of Article 107(1) of the TFEU, the Commission has to establish whether the aid can be declared compatible with the internal market pursuant to Article 107(2) or (3) of the TFEU.
- (118) On the question of the applicability of the exemptions provided for in the Treaty, the Commission took the view in the opening decision that the aid did not qualify for exemption under Article 107(2)(a), because it was not aid having a social character, and that it did not fall within Article 107(2)(c). For obvious reasons, the exemptions in Article 107(3)(b) and (d) were not applicable either. Italy did not dispute these findings during the formal investigation. As regards a possible reliance on the exemptions in Article 107(3)(a) and (c), the Commission would refer to the doubts it expressed in the opening decision (see Section 3.3.2 of the opening decision). In its comments, the Member State did not argue that the aid might qualify for exemption under Article 107(3)(a) or (c), nor did it provide any information in the course of the formal investigation that would enable the Commission to assess the compatibility of the schemes in question in the light of those exemptions. Instead, Italy (and the interested third parties who submitted comments) argued that the aid was meant to make good the damage caused by natural disasters, thus implying that it should be assessed on the basis of the exemption in Article 107(2)(b). This conclusion is without prejudice to the possibility that individual aid granted under the schemes may be declared compatible following a case-by-case examination, or may be covered by an exemption regulation adopted pursuant to Article 1 of Council Regulation (EC) No 994/98 ⁽⁶³⁾.
- (119) Since all the rebate measures do indeed relate to undertakings having their registered office or place of business in areas affected by natural disasters, the Commission will consider whether the measures might qualify for exemption under Article 107(2)(b) as 'aid to make good the damage caused by natural disasters or exceptional occurrences'.

Aid to make good the damage caused by natural disasters

- (120) The Commission has examined the aid schemes in question in the light of Article 107(2)(b) of the TFEU, which stipulates that 'aid to make good the damage caused by natural disasters or exceptional occurrences' is compatible with the internal market.
- (121) The Commission has to verify whether the disasters indicated by Italy do indeed qualify as 'natural disasters' within the meaning of Article 107(2)(b), and whether the following conditions are met:
- (a) the damage for which the compensation is granted is a direct consequence of the natural disaster in question;
 - (b) the aid only makes good the damage caused by the natural disaster and does not result in overcompensation of the damage suffered by the beneficiaries.

⁽⁶³⁾ Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 [now 87 and 88] of the Treaty establishing the European Community to certain categories of horizontal State aid (OJ L 142, 14.5.1998, p. 1).

- (122) The Italian legislation identifies areas affected by one of three types of natural disasters: earthquakes, floods and volcanic eruptions. The Commission has consistently taken the view that earthquakes, floods and volcanic eruptions constitute natural disasters within the meaning of Article 107(2)(b); consequently, every undertaking that actually suffered damage as a result of these natural disasters may qualify for aid up to an amount necessary to make good such damage ⁽⁶⁴⁾.
- (123) However, the schemes in question do not lay down any definition of damage (whether material or economic), nor do they establish any link between the aid and the damage actually suffered as a result of the natural disaster ⁽⁶⁵⁾. Furthermore, the schemes do not confine the compensation to the amount necessary to make good the direct damage actually suffered by the particular beneficiary. Finally, the eligible costs are not determined on the basis of the damage suffered by the undertakings as a direct consequence of the natural disaster. This was confirmed by the Italian authorities during the formal investigation (see comments by the INPS at recital 98).
- (124) The Commission concludes that the schemes provided benefits not just to undertakings that suffered actual damage, but to all companies having their registered office or place of business in the areas designated as disaster areas by the Italian authorities, irrespective of whether they actually did suffer any damage as a result of the respective disaster.
- (125) In the light of the above, the measures under investigation are not, by their nature and operational arrangements, designed to ensure that the aid granted is limited to the amount needed to make good the damage caused by natural disasters.
- (126) It must therefore be concluded that the formal investigation has not allayed the Commission's doubts about the compatibility of the measures with the internal market.
- (127) Therefore, as the aid does not qualify for any of the exemptions in Article 107(2) and (3) of the TFEU, the Commission finds that the schemes are incompatible with the internal market.
- (128) The compatibility of the measures with Union legislation when they are applied to fisheries and aquaculture has to be assessed in the light of the guidelines for the examination of State aid to the fishery and aquaculture sector that were current at the date of the entry into force of the particular scheme. The Commission has published such guidelines, indicating how it intends to apply the Treaty to State aid to fisheries and aquaculture, since 2001.
- (129) Under the guidelines the requirements for aid to make good the damage caused by natural disasters are largely the same as those set out above, and the Commission concludes that the observations made in this section also apply to any aid granted under the measures in the fishery and aquaculture sector.

Comments by interested parties

- (130) Comments on the doubts expressed by the Commission in the opening decision were sent by the Italian authorities and by four other interested parties: Chiti, Preve-Gavioli, Confindustria, and CGIL L'Aquila.
- (131) All of the interested parties pointed out that under Article 107(2)(b) of the TFEU aid to make good the damage caused by natural disasters is compatible with the internal market. The measures in question were addressed to

⁽⁶⁴⁾ In line with the findings in the following judgments: Case C-303/09 *Commission v Italy* [2011] ECR I-102* (ECLI:EU:C:2011:483); Joined Cases C-71/09 P, C-73/09 P and C-76/09 P *Comitato 'Venezia vuole vivere' and Others v Commission* [2011] ECR I-4727 (ECLI:EU:C:2011:368); Joined Cases C-346/03 and C-529/03 *Atzeni and Others v Regione autonoma della Sardegna* [2006] ECR I-1875 (ECLI:EU:C:2006:130); Case C-73/03 *Spain v Commission*, 11 November 2004 (ECLI:EU:C:2004:711); Case C-278/00 *Greece v Commission* [2004] ECR I-3997 (ECLI:EU:C:2004:239); and Case C-364/90 *Italy v Commission* [1993] ECR I-2097 (ECLI:EU:C:1993:157).

⁽⁶⁵⁾ With the exception of the measures linked to the floods in northern Italy in 1994, which set a minimum level of damage as a condition of any aid.

undertakings located in areas hit by earthquakes, floods and volcanic eruptions. However, in the preceding section ('Aid to make good the damage caused by natural disasters'), the Commission finds that the measures in question were not by their nature and operational arrangements designed to make good the damage caused by the aforementioned natural disasters within the meaning of Article 107(2)(b).

- (132) Chiti and Confindustria also say that the aid provided for by some of the measures was granted only after the actual damage suffered by each undertaking had been verified. The possibility cannot be ruled out that in specific cases the aid granted under the measures did not exceed the amount needed to make good the actual damage suffered by the beneficiary as a direct result of the disaster, so that the aid granted to the particular undertaking should be regarded as compatible with the internal market under Article 107(2)(b). However, the measures in question are not, by their nature and operational arrangements, designed to rule out any form of overcompensation of damage, and only to make good the damage caused by the natural disaster. As explained in the preceding section ('Aid to make good the damage caused by natural disasters'), their scope is far wider, because they do not require that the aid be linked directly to the damage suffered as a result of the natural disaster. By failing to make such a link, they fail to confine the compensation to the amount needed to make good the damage actually suffered by the undertakings. Even where beneficiaries are required to prove that they have suffered heavy damage, as in the case of Piedmont, the legislation does not limit the amount of aid to the ascertained loss caused by the floods. As for the Italian authorities' comments regarding the impact of the 2009 earthquake on the social and economic fabric of Abruzzo, and more specifically on the area affected by this exceptionally violent and destructive earthquake, the Commission points out once again that, according to the Treaty and in line with the Commission's settled practice⁽⁶⁶⁾, there must be a clear and direct link between the event that caused the damage and the State aid intended to remedy it. Such a link must be established at the level of the individual undertaking, and not at the macroeconomic level, as in the case of the measure under investigation (for the Abruzzo earthquake of 2009, the notified measure that is the subject of case SA.35083 (12/C)).
- (133) It must therefore be concluded that the comments provided by interested third parties during the formal investigation have not allayed the Commission's doubts, and that the measures in question constitute aid that is incompatible with the internal market.

Consequences of this Decision

- (134) This Decision requires immediate implementation, which among other things means that aid granted unlawfully and declared incompatible should be recovered. The Commission observes that a negative decision on an aid scheme does not detract from the possibility that certain advantages granted under the scheme may not themselves constitute aid, or may in whole or in part be considered aid compatible with the internal market on their own merits (for example because the benefit is granted to individuals who are not carrying on an economic activity, and who are therefore not to be regarded as undertakings, or because in the particular case the benefit is within the limits of the applicable *de minimis* regulation, or because the benefit is granted in conformity with an approved aid scheme or an exemption regulation).
- (135) Italy must cancel any outstanding payments of aid under any of the schemes referred to in recital 109 to this Decision, with effect from the date of adoption of the Decision. From that date none of these schemes may be used as a basis of reference for the granting or the payment of aid in the future.
- (136) In respect of aid paid to individual undertakings under the measures examined here before the date of the opening decision and the suspension injunction (see recital 54), the scheme should be considered compatible

⁽⁶⁶⁾ See, for example, Commission Decision 2005/315/EC of 20 October 2004 on the aid scheme implemented by Italy for firms investing in municipalities seriously affected by natural disasters in 2002 (OJ L 100, 20.4.2005, p. 46).

with the internal market under Article 107(2)(b) of the TFEU provided that a clear and direct link can be established between the damage suffered by the particular undertaking as a result of the natural disaster and the State aid granted ⁽⁶⁷⁾. Care should be taken to avoid any overcompensation of the damage suffered by the individual undertaking. Furthermore, any compensation for such damage received from any source must be deducted, and it must be ensured that there is no overlapping of aid under the scheme in question and aid provided under other measures towards the same eligible costs.

Recovery

- (137) According to the Treaty and the settled case-law of the Court of Justice, when the Commission finds that aid is incompatible with the internal market, it is competent to decide that the State concerned must abolish or alter it ⁽⁶⁸⁾. The Court has also consistently held that the obligation on a State to abolish aid that the Commission finds to be incompatible with the internal market is designed to re-establish the previously existing situation ⁽⁶⁹⁾. The Court has established that this objective is attained once the recipient has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage that it had enjoyed over its competitors on the market, and the situation prior to the payment of the aid is restored ⁽⁷⁰⁾.
- (138) In line with that case-law, Article 14(1) of Regulation (EC) No 659/1999 stipulates that ‘Where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary’.
- (139) Thus, once the aid under investigation is found to constitute unlawful and incompatible State aid, it must in principle be recovered in order to re-establish the situation that existed on the market prior to the granting of the aid. However, Regulation (EC) No 659/1999 imposes limits on the provision for recovery. Article 14(1) provides that ‘The Commission shall not require recovery of the aid if this would be contrary to a general principle of Community law’, which might for example be the protection of legal certainty or of legitimate expectations. The Court of Justice has also recognised one exception to the obligation for a Member State to implement a recovery decision addressed to it, namely the existence of exceptional circumstances that make it absolutely impossible for the Member State to execute the decision properly ⁽⁷¹⁾.
- (140) In the course of the formal investigation, exceptions of this kind were raised by interested parties (Confindustria and Chiti) and by the Italian authorities, and the Commission must examine whether they apply to the present case in order to determine whether recovery is required.
- (141) Confindustria invokes legitimate expectations (recital 80); the Commission points out that, in principle, the beneficiary of an aid measure that was not notified cannot challenge a recovery order by submitting that it holds a legitimate expectation that the grant of aid is lawful ⁽⁷²⁾, as a diligent businessman should normally be able to determine whether the aid was notified ⁽⁷³⁾. Moreover, in the cases at hand the Commission itself has not given the Italian authorities or the beneficiaries any grounds for entertaining legitimate expectations ⁽⁷⁴⁾.

⁽⁶⁷⁾ For example, in cases of aid granted to individual undertakings in the area affected by the Abruzzo earthquake of 2009, the aid should be considered compatible pursuant to Article 107(2)(b) of the TFEU if the eligible costs are calculated in line with Commission Decision C(2009) 8042 of 16 October 2009 in State aid case N 459/A/2009 — Aid scheme for compensation for damage caused by the earthquake in Abruzzo of 6 April 2009 (OJ C 289, 18 November 2009, p. 3).

⁽⁶⁸⁾ Case C-70/72 *Commission v Germany* [1973] ECR 813, paragraph 13 (ECLI:EU:C:1973:87).

⁽⁶⁹⁾ Joined Cases C-278/92, C-279/92 and C-280/92 *Spain v Commission* [1994] ECR I-4103, paragraph 75 (ECLI:EU:C:1994:325).

⁽⁷⁰⁾ Case C-75/97 *Belgium v Commission* [1999] ECR I-3671, paragraphs 64 and 65 (ECLI:EU:C:1999:311).

⁽⁷¹⁾ Case C-404/00 *Commission v Spain* [2003] ECR I-6695 (ECLI:EU:C:2003:373).

⁽⁷²⁾ Case C-148/04 *Unicredito Italiano* [2005] ECR I-11137, paragraph 104 (ECLI:EU:C:2005:774).

⁽⁷³⁾ Case C-5/89 *Commission v Germany* [1990] ECR I-3437, paragraph 14 (ECLI:EU:C:1990:320).

⁽⁷⁴⁾ Joined Cases C-182/03 and C-217/03 *Belgium and Forum 187 v Commission* [2006] ECR I-5479, paragraph 147 (ECLI:EU:C:2006:416).

- (142) In its comments (see recital 80) Confindustria also invokes the 10-year period of limitation laid down in Article 15 of Regulation (EC) No 659/1999. The Regulation provides that when it adopts a negative decision in a case of unlawful aid, the Commission is to require the Member State to take all necessary measures to recover the aid from the beneficiary; however, the powers of the Commission to recover aid are subject to a period of limitation of 10 years. The limitation period is interrupted by any action taken with regard to the unlawful aid by the Commission, or by a Member State acting at the Commission's request, and starts running afresh after each interruption. The Commission was informed of the existence of the measures in 2011, and took action with regard to the unlawful aid by requesting information from the Italian authorities on 25 July 2011. The Commission adopted the decision opening the formal investigation on 17 October 2012; the law introducing the first of the measures under investigation had been adopted by Italy on 27 December 2002 (see recital 22). Thus the limitation period for recovery of the aid which is laid down in Article 15 of Regulation (EC) No 659/1999 has not expired in respect of any of the rebate measures dealt with in this Decision.
- (143) Chiti argues (see recital 73) that from late 1994 until 2011 no national or Community authority raised any questions about the lawfulness of the benefits; the Commission observes that the aid under investigation was granted only when the rebate measures entered into force. Until then undertakings had an obligation to pay the full amount due for taxes and contributions. Undertakings began to benefit from the reduction in the amounts due in taxes and contributions only in 2003. In these circumstances, there can be no claim either of limitation (invoked by Confindustria, see recital 142) or of legitimate expectations (as put forward in Confindustria's further submissions, see recital 141); it should be borne in mind that mere inaction on the part of national or Community institutions cannot provide grounds for legitimate expectations. On the basis of the reasoning presented in the preceding recitals, therefore, the argument on this point put forward by the interested party is rejected.
- (144) As for Chiti's argument invoking the principle of legal certainty (see recital 73), there is no reason to distinguish this case from the *Lucchini* case ⁽⁷⁵⁾. The Commission therefore considers that the existence of final judgments by national Courts does not prevent recovery.

Exceptional circumstances: absolute impossibility of recovery

- (145) Under Article 288 of the TFEU, the Member State to which a recovery decision is addressed is obliged to implement the decision. As indicated above, the Court has identified one exception to this obligation, namely where the Member States demonstrates the existence of exceptional circumstances that make it absolutely impossible to execute the decision.
- (146) Member States usually raise this argument in discussions with the Commission after the adoption of a decision ordering recovery ⁽⁷⁶⁾. However, in this case, Italy has argued prior to the adoption of the decision that for certain measures recovery should not be ordered because it would be absolutely impossible to implement the order. Since Italy raised this issue in the course of the formal investigation, and since a general principle of law states that no-one can be required to do the impossible, the Commission considers it appropriate to deal with the question in the Decision itself ⁽⁷⁷⁾.
- (147) It should first be recalled that the Court of Justice has consistently given a very strict interpretation to the concept of 'absolute impossibility'. The condition that recovery must be absolutely impossible is not fulfilled where the Member State merely informs the Commission of the legal, political or practical difficulties involved in

⁽⁷⁵⁾ Case C-119/05 *Ministero dell'Industria, del Commercio e dell'Artigianato v Lucchini* [2007] ECR I-6199 (ECLI:EU:C:2007:434).

⁽⁷⁶⁾ Case C-214/07 *Commission v France* [2008] ECR I-8357, paragraphs 13 and 22 (ECLI:EU:C:2008:619).

⁽⁷⁷⁾ Commission Decision 2013/284/EU of 19 December 2012 on State aid SA.20829 (C 26/2010, ex NN 43/2010 (ex CP 71/2006)) Scheme concerning the municipal real estate tax exemption granted to real estate used by non-commercial entities for specific purposes implemented by Italy (OJ L 166, 18.6.2013, p. 24).

implementing the decision ⁽⁷⁸⁾. The only instance where 'absolute impossibility' can be accepted is where recovery would, from the beginning, be impossible in objective and absolute terms ⁽⁷⁹⁾.

- (148) In the case at hand, the Italian authorities have repeatedly argued that a precise calculation of the amount of incompatible aid to be recovered is absolutely impossible. Under the Italian Civil Code (Article 2200) and tax law, they say, undertakings have a duty to keep business and accounting records only for 10 years. The documentary evidence of damage caused by a natural disaster has to be assembled on the basis of official documents (business and accounting records) drawn up at the time of the event. For events that happened more than 10 years ago, therefore, it is no longer possible to determine the amount of damage suffered by individual beneficiaries, or the amount already compensated from other sources, such as insurance or other aid measures. For most of the measures under investigation, more than 10 years have elapsed since the natural disaster. This is the case for all the events relating to case SA.33083 (12/C), i.e. the earthquake in eastern Sicily in 1990, the floods in northern Italy in 1994, the earthquake in Marche and Umbria in 1997, the earthquake in Molise and Puglia in 2002, and the earthquake and eruptions of Mount Etna in the province of Catania in 2002. Italy thus contends that for these events it is no longer possible to trace records proving the damage (or any compensation received).
- (149) Under Article 107(2)(b) of the TFEU, aid 'to make good damage caused by natural disasters' is compatible with the internal market, and aid is incompatible and must be recovered only if it exceeds the damage suffered. However, the vast majority of beneficiaries that have suffered damage as a result of natural disasters that occurred more than 10 years ago no longer have the documents needed to show that they suffered damage, or to prove the amount of the damage suffered, because under Italian law companies are not required to keep business and accounting records for more than 10 years. As a result, if the Commission were to order the recovery of the amount of aid exceeding the level of damage for which the beneficiaries can still provide proof, the Member State would be required to recover aid which was compatible with the internal market under Article 107(2)(b) and to which undertakings that had suffered damage as a consequence of a natural disaster were in reality entitled.
- (150) In principle, the Commission ought to order the recovery of the incompatible aid granted by Italy under the measures referred to in recital 109. However, (a) the beneficiaries of the measures are undertakings located in areas affected by natural disasters; (b) aid to make good the damage caused by natural disasters constitutes aid which is, in law, compatible with the internal market under Article 107(2)(b) of the TFEU; (c) most of these natural disasters happened more than 10 years before the date of the present Decision; and finally, (d) under national law the beneficiaries of the aid are not required to keep records for longer than 10 years, so that it would be impossible in objective and absolute terms to determine the precise amount of damage they suffered as a direct consequence of the natural disaster. In the very specific circumstances of the aid measures that are the subject of this Decision, therefore, the Commission accepts that for natural disasters that occurred more than 10 years before the date of the present Decision it is legally and factually impossible to obtain the information necessary to calculate the precise amount of incompatible aid to be recovered. To enforce a recovery order under these conditions would therefore be impossible in objective and absolute terms.
- (151) However, the impossibility of calculating the precise amount of incompatible aid to be recovered does not apply to undertakings that did not have a place of business (such as their principal place of business or another business unit) in the area affected by the natural disaster at the time of the event. These beneficiaries of the measures referred to in recital 109 must not be excluded from recovery, since they could not have suffered any direct damage caused by the natural disaster, and consequently could not be entitled to aid that was compatible with the internal market under Article 107(2)(b) of the TFEU. The Italian authorities must establish whether there was a place of business by consulting the information in the public registers for the time of the event.
- (152) In conclusion, the Commission finds that, given the specific nature of the cases in question, it would be absolutely impossible for Italy to recover any aid unlawfully granted under the measures under investigation where the natural disaster occurred more than 10 years before the date of the present Decision, with the exception of beneficiaries without a place of business in the area affected by the natural disaster at the time of the

⁽⁷⁸⁾ Case C-404/00 *Commission v Spain* [2003] ECR I-6695, paragraph 47 (ECLI:EU:C:2003:373).

⁽⁷⁹⁾ Case C-75/97 *Belgium v Commission* ('*Maribel I*') [1999] ECR I-3671, paragraph 86 (ECLI:EU:C:1999:311); Case C-214/07 *Commission v France* [2008] ECR I-8357, paragraphs 13, 22 and 48 (ECLI:EU:C:2008:619).

event. Apart from that group, no order should be made requiring recovery of the aid granted under the unlawful and incompatible schemes where the natural disaster occurred more than 10 years before the date of this Decision.

7. CONCLUSION

- (153) The Commission finds that Italy has unlawfully put into effect the aid measures referred to in recital 109 in breach of Article 108(3) of the TFEU.
- (154) Since no grounds can be identified for finding the measures to be compatible with the internal market, they must be held to be incompatible.
- (155) Article 14 of Regulation (EC) No 659/1999 states that 'Where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary ... The Commission shall not require recovery of the aid if this would be contrary to a general principle of Union law' ⁽⁸⁰⁾.
- (156) In the light of the exceptional circumstances discussed in recitals 147 to 152, recovery should not be ordered where the aid was granted under the measures in question to individual beneficiaries in areas hit by natural disasters more than 10 years before the date of the present Decision, except where the beneficiary had no place of business in the area affected by the natural disaster at the time of the event. Italy has demonstrated that it would be absolutely impossible to calculate the precise amount of incompatible aid to be recovered. Individual beneficiaries who are eligible for aid that is compatible with the internal market under the exemption in Article 107(2)(b) of the TFEU may no longer have at their disposal the documents needed to provide evidence of the damage caused by the natural disaster, and to show whether or not they have already received compensation for all or part of the damage suffered. However, aid must be recovered if it was granted under any of the measures in question to individual beneficiaries without a place of business in the area affected by the natural disaster at the time of the event (even where the natural disaster happened more than 10 years before the date of the present Decision). Italy must establish whether there was a place of business by consulting the information in the public registers for the time of the event.
- (157) The Commission will therefore require Italy to take all necessary measures to recover only the incompatible aid granted and paid out to individual undertakings under the measures referred to in recital 109 otherwise than in individual cases that satisfy the tests of compatibility with the internal market by virtue of the exemption in Article 107(2)(b) of the Treaty, as explained in recital 136, or cases where the individual grant is in line with the applicable *de minimis* regulation, or cases where the individual benefit is granted in conformity with an approved aid scheme or an exemption regulation, as explained in recital 134. Within two months of the notification of this Decision, Italy must order aid recipients to repay the aforementioned unlawful and incompatible State aid.
- (158) In compliance with Article 14(2) of Regulation (EC) No 659/1999, the amount to be recovered must bear interest, calculated in compliance with Article 9 of Commission Regulation (EC) No 794/2004 ⁽⁸¹⁾, from the date on which it was put at the disposal of the beneficiary and until full recovery.
- (159) The Commission requests Italy to return the attached form recording progress in the recovery procedure, to draw up a list of beneficiaries, and to specify clearly the measures taken for the immediate and effective recovery of the aid. It also requests Italy to send, within two months of the date of notification of this Decision, any documents showing that procedures have been initiated to recover illegal and incompatible aid from the beneficiaries (for example, administrative documents, circulars, recovery orders issued, etc.),

⁽⁸⁰⁾ See footnote 3.

⁽⁸¹⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

The State aid schemes in question (Article 9(17) of Law No 289 of 27 December 2012, as amended; Article 4(90) of Law No 350 of 24 December 2003, as amended; Article 1(363) of Law No 266 of 23 December 2005, as amended; Article 1(1011) of Law No 296 of 27 December 2006, as amended; Article 2(109) of Law No 244 of 24 December 2007, as amended; Article 6(4-bis) and (4-ter) of Decree-law No 185 of 29 November 2008, as amended; Article 33(28) of Law No 183 of 12 November 2011, as amended; and all the relevant measures enacted under those Laws), which reduce taxes and contributions payable by undertakings in areas hit by natural disasters in Italy since 1990, and which were unlawfully put into effect by Italy in breach of Article 108(3) of the Treaty on the Functioning of the European Union, are incompatible with the internal market.

Article 2

Aid granted in individual cases under the measures referred to in Article 1 does not constitute aid if, at the time it is granted, it fulfils the conditions laid down by Regulation (EU) No 1407/2013 or Regulation (EU) No 717/2014.

Article 3

Aid granted in individual cases under the measures referred to in Article 1 which, at the time it is granted, fulfils the conditions laid down by a Regulation adopted pursuant to Article 1 of Regulation (EC) No 994/98, or by any other approved aid scheme, is compatible with the internal market up to the maximum aid intensity applicable to that type of aid.

Article 4

1. Italy shall recover from the beneficiaries the incompatible aid granted under the scheme introduced by Article 33(28) of Law No 183 of 12 November 2011, as amended, and all relevant implementing measures enacted under that Law.
2. Italy shall also recover the incompatible aid granted under the other schemes referred to in Article 1 from all beneficiaries without a place of business in the area affected by the natural disaster at the time of the event.
3. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiaries until their actual recovery.
4. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 and with Regulation (EC) No 271/2008 amending Regulation (EC) No 794/2004.
5. Moreover, Italy shall cancel all outstanding payments of aid under all schemes referred to in Article 1 with effect from the date of adoption of this Decision.

Article 5

1. The recovery of the aid referred to in Article 4 shall be immediate and effective.
2. Italy shall ensure that this Decision is implemented within four months following the date of notification of the Decision.

Article 6

1. Within two months following notification of this Decision, Italy shall submit the following information:
 - (a) the list of beneficiaries that have received aid to be recovered under Article 4, and the total amount of aid received by each of them under the relevant scheme;
 - (b) the total amount (principal and interest) to be recovered from each beneficiary;
 - (c) a detailed description of the measures already taken and planned to comply with this Decision;
 - (d) documents demonstrating that the beneficiaries have been ordered to repay the aid.
2. Italy shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 4 has been completed. It shall on request by the Commission immediately submit information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiaries.

Article 7

This Decision is addressed to the Italian Republic.

Done at Brussels, 14 August 2015.

For the Commission
Margrethe VESTAGER
Member of the Commission

ANNEX

Information about the amounts of aid received, to be recovered and already recovered

Identity of the beneficiary	Total amount of aid received under the scheme (*)	Total amount of aid to be recovered (*) (Principal)	Total amount already reimbursed (*)	
			Principal	Recovery interest

(*) In million units of national currency.